Supreme Court, U.S.
FILED
DEC 21 1971
E. ROBERT SEAVER, CLERK

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-686

G. T. BLANKENSHIP, Attorney General, State of Oklahoma; SUN OIL COMPANY (formerly SUNRAY DX OIL COMPANY), a foreign corporation; KERR-McGEE CORPORATION; PHILLIPS PETROLEUM COMPANY; BAXTER LAND CORPORATION (formerly INLAND ASPHALT, INC.),
Petitioners,

VERSUS

STATE OF OKLAHOMA, EX REL. J. WOODROW WILSON,
Respondent.

BRIEF IN OPPOSITION

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December, 1971

UTTERBACK TYPESETTING CO., 519 W. CALIF., OKLAHOMA CITY, PH. 235-0036

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I

IMPORTANCE OF THE QUESTION

The opinion and judgment of the Tenth Circuit affects only the litigants herein; it is consistent with opinions of this Court and affords the citizens of Oklahoma an opportunity to seek recourse. The judgment is based upon rules of long-standing promulgated by this Court, and pursuant to the admonition of Mr. Justice Cordozo in *Gully* v. *First National Bank in Meridian*, 299 U.S. 109, 58 S.Ct. 96, 81 L.Ed. 70, that there must be a common-sense adjustment of the law to changing factual situations.

Petitioners' recitation concerning the importance of the question, when applied to proper factual situations, cannot be argued with. However, Petitioners are taking the position that for Respondent to ever prevail, it must first have the state court set aside the federal judgment. This of course is an erroneous assumption. It is without question that the federal judgment gave life to Respondent's claim. The federal judgment created a property right belonging to the State of Oklahoma; a part of that property was disposed of through the conjoint and conspiratorial acts of Petitioners, contrary to *Article V, Section 53 of the Oklahoma Constitution*.[1] Respondent in its state court petition sought only to recover the remainder of that property created by the federal judgment of September 24, 1968, in a state court, pursuant to state law. Respondent's cause of action is based upon the property right it acquired by virtue of said judgment and the acts of Petitioners subsequent thereto, which ultimately resulted in the agreed remittitur, and which Petitioners thereafter sought to clothe with the sacrosanctity of the federal judgment of January 15, 1969.

The judgment of the federal court of January 15, 1969, insofar as Respondent's case is concerned, is of no consequence. Irrespective of Respondent's prayer in its amended complaint (which constitutes no part of the pleading) the state court could not in any way change the federal court judgment, nor would it need to in order to afford Respondent its remedy. Petitioners are merely attempting to cre-

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[1] "Except as to tax and assessment charged against real estate * * *, the legislature shall have no power to release or extinguish, or to authorize the releasing or extinguishing, in whole or in part, the indebtedness, liabilities or obligations of any corporation or individual, to this State, or any county or other municipal corporation thereof."

ate an "important question" for the purpose of their Petition, from the bits and tatters of possibly inadvertent but not fatally defective verbiage.

This Court as early as 1888, in *Metcalf* v. *City of Watertown*, 128 U.S. 543, 9 S.Ct. 73, 32 L.Ed. 543, came to grips with the problems of the nature of a federal judgment insofar as it affects jurisdiction of state and federal courts. Therein plaintiff had sued defendant in the federal trial court in the State of Wisconsin on a federal judgment that had been previously awarded his assignor. Judgment was had by defendant in the trial court and review was sought in this Court. In this Court, lack of jurisdiction had not been urged as error. Mr. Justice Harland delivered the opinion of the Court and in reversing for lack of jurisdiction stated:

> "* * * Nor can the jurisdiction of the Circuit Court be maintained upon the theory that the suit is one arising under the Constitution or laws of the United States. The fact that it was brought to recover the amount of a judgment of a court of the United States, does not, of itself, make it a suit of that character; for the Plaintiff without raising by his complaint any distinct question of a federal nature, and without indicating, by proper averment, how the determination of any question of that character is involved in this case, seeks to enforce an ordinary right of property, by suing upon the judgment merely as a security of record, showing a debt due from the City of Watertown * * *."

So in *Metcalf*, where suit was instituted on the basis of a judgment of a federal court, in a federal court, this Court reversed on the grounds that the federal court did not have jurisdiction. *Metcalf* was cited by Judge Murrah

in *Prairie Band of Pottawatomie Tribe of Indians* v. *Puckkee*, 321 F.2d 767 (C.A. 10, 1963), as authority for his holding in that case, that a suit which involves the construction or effect on a federal judgment, in and of itself, did not constitute a federal question. Of course, the case at bar and *Metcalf* are readily distinguishable if you take the view, as Petitioners do, that Respondent must set aside the federal judgment in its state court suit before it can prevail. However, if it is viewed from the standpoint (as Mr. Justice Harland did in *Metcalf*) that the federal judgment is nothing more than a property right, then Respondent's attempt in state court to recover its property created by the federal judgment is not inconsistent with *Metcalf*. Petitioners' assertion that the question herein presented for review is unique to this Court is baseless.

II

CONFLICTS AMONG THE COURTS

Petitioners have cited *South Dakota Central Ry. Co.* v. *Continental and Commercial Trust and Savings Bank, et al.*, 255 Fed. 941 (C.A. 8), as being in conflict with the ruling of the Tenth Circuit Court in the instant action. The two cases are readily distinguishable. In *South Dakota* appellant had made a direct attack upon the federal judgment in a state court; it could only prevail if the federal judgment was set aside. In the instant case it is not necessary that the federal judgment of January 15, 1969, be disturbed at all; Respondent is only seeking to recover that property right created by the federal judgment of September 24, 1968, under a state statute which gives it the right. The instant case is more comparable to *Carson* v. *Dunaham*,

121 U.S. 421, 7 S.Ct. 1030, 30 L.Ed. 992, which was cited as authority by appellant in *South Dakota* and distinguished therein by the court. The Eighth Circuit, in *South Dakota*, quoted from *Carson* as follows:

> "It is an attempt to enforce an ordinary property right, acquired under the authority of judgments and decrees in the court of the United States, without presenting any question distinctly involving the laws of the United States."

Petitioners have also cited *Deauville Associates* v. *Lojoy Corporation*, 181 F.2d 5 (C.A. 5, 1950), as being in conflict with the Tenth Circuit ruling in the instant case. *Deauville* is distinguishable on the same basis as is *South Dakota* inasmuch as therein appellants were also making a direct attack in a state court upon a federal judgment and could only be afforded a remedy if the federal judgment was set aside.

III

THE OPERATION AND EFFECT ON SECTION 1355

Petitioners are concerned that Respondent in its state court action is seeking to recover a penalty from Petitioners when the exclusive jurisdiction to do so is vested in the federal court. Respondent states again, as it has previously, that its cause of action is footed upon the federal judgment, which is composed of actual damages and the penalty imposed by the court under the anti-trust provision of the Acts of Congress. However, once the judgment of September 24, 1968, had been entered by the court, it then became a property right belonging to the State of Oklahoma, and the source of the property loses significance insofar as the jurisdictional issue is concerned.

Petitioners reason that original jurisdiction would lie in federal court on the basis that a portion of the property Respondent seeks to recover had its source in the penalty provisions of the Acts of Congress; if this be a proper premise, then it should logically follow that that portion of property would never lose its identity and forever be subject to federal jurisdiction; Respondent respectfully suggests that such reasoning is fallacious.

IV

THE DEPARTURE OF THE COURT FROM ACCEPTED PROCEDURE

Petitioners have asked this Court to exercise its supervisory powers to correct what they say is harmful error made by the Tenth Circuit in its opinion. The portion of the Circuit Opinion complained of appears in the appendix of the Petition for a Writ of Certiorari at pages xxxiii through xxxvi. This part of the opinion is directed to Petitioners' contention in their brief to the Circuit supporting their theory that the federal court had jurisdiction of the cause. They therein took the position that had they chosen they could have had injunctive relief from the federal court to prohibit the state court from proceeding in the cause; suggesting to the Circuit that for this reason jurisdiction of the trial court should be sustained. It appears that Petitioners have been answered by the Circuit in a way not to their liking and now want relief from an opinion which met their argument head-on.

In discussing the question of injunctive relief the court necessarily had to review the arguments made by Petitioners and Respondent in their respective Circuit Court

briefs with regard to whether or not the state action was the same as the federal action. Petitioners, in their brief to the Circuit devoted 24 pages to that argument, concluding the cases were identical and *res judicata* or collateral estoppel was a bar. The Circuit opinion in concluding that the federal court was without jurisdiction, was upon the issues framed by the pleadings and which were briefed extensively and argued. Petitioners should not now be heard to complain that a matter determined by the Circuit, in resolving the jurisdictional issue, is a departure from "Accepted Procedure."

CONCLUSION

For the reasons above stated, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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